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RECENT DEVELOPMENT

NORMAN V. STATE: THE ODOR OF MARIJUANA EMANATING FROM A VEHICLE ALONE DOES NOT CREATE REASONABLE ARTICULABLE SUSPICION THAT A VEHICLE'S OCCUPANT IS ARMED AND DANGEROUS AND THEREFORE DOES NOT JUSTIFY A FRISK.

By: Shane Rosenbloom

The Court of Appeals of Maryland held that without additional circumstances, the smell of marijuana alone did not create a reasonable articulable suspicion that an occupant of the vehicle was armed and dangerous. *Norman v. State*, 452 Md. 373, 156 A.3d 940 (2017). Therefore, the officer did not have the right to frisk the occupant. *Id.* The court further held that in order for a frisk to be justified, there must be circumstances other than the odor of marijuana emanating from a vehicle to give rise to reasonable articulable suspicion that the occupant is armed and dangerous. *Id.*

On March 22, 2015, around 9:00 P.M., Trooper Dancho ("Dancho") conducted a traffic stop of a vehicle with Joseph Norman ("Norman") seated in the passenger seat. Dancho approached the driver's side and detected a strong odor of raw marijuana arising from the vehicle. All three passengers were instructed to exit the vehicle and frisked for weapons. While Dancho was moving Norman's pants pockets, in an attempt to search for weapons, a bag of marijuana fell on the ground. Dancho then searched the vehicle and found marijuana in the center compartment along with paraphernalia, to which Norman admitted sole possession. Dancho subsequently arrested Norman. Upon a further search at the police barracks, Dancho discovered another bag of marijuana on his person.

Norman appeared in the Circuit Court of Somerset County on charges of possession of marijuana with intent to distribute, possession of marijuana and possession of paraphernalia. Norman filed a motion to suppress the evidence claiming it was obtained illegally. The circuit court denied the motion, finding the frisk reasonable under the totality of the circumstances, since guns are typically present during drug activity. The court found Norman guilty of possession of marijuana and sentenced him to nine months of imprisonment. The Court of Special Appeals of Maryland affirmed, holding that the odor of marijuana emanating from the vehicle gave Dancho the right to frisk Norman based on the notion that guns typically accompany drug activity. The Court of Appeals of Maryland then granted *certiorari* to determine whether the smell of marijuana emanating from a vehicle creates reasonable articulable suspicion that all occupants of the vehicle are armed and dangerous, thus justifying a frisk. Also, the court aimed to determine whether Dancho had reasonable articulable suspicion that Norman was

armed and dangerous, based solely on the odor of marijuana emanating from the vehicle.

The Court of Appeals began its analysis by explaining the purpose of the Fourth Amendment and the effect of *Terry v. Ohio*. *Norman*, 452 Md. at 387-88, 156 A.3d at 948. Under *Terry*, the Fourth Amendment allows law enforcement officers to stop an individual if the officer has reasonable articulable suspicion that criminal activity is afoot. *Id.* at 388, 156 A.3d at 949 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). If the *Terry* stop is valid, the officer must then have reasonable articulable suspicion that a person is armed and dangerous in order to conduct a *Terry* frisk. *Norman*, 452 Md. at 387, 156 A.3d at 948 (citing *Sellman v. State*, 449 Md. 526, 541-42, 144 A.3d 771, 780-81 (2016)).

In assessing the level of danger, a totality of the circumstances analysis is used to determine whether a reasonably prudent officer in the same situation would have felt that he or she was in potential danger, thus justifying the frisk. *Norman*, 452 Md. at 387, 156 A.3d at 948. In order to conduct a frisk, the officer's sole purpose must be to uncover any concealed weapons that could potentially harm them. *Id.* at 388, 156 A.3d at 948. In its analysis of prior case law, the court examined whether the odor of marijuana emanating from the vehicle solely created a reasonable articulable suspicion that all of the occupants of the vehicle were armed, thus justifying a frisk of Norman. *Id.* at 409, 156 A.3d at 961.

Recently, in *Robinson v. State*, the Court of Appeals of Maryland held that the odor of marijuana alone creates probable cause to search a vehicle, as this odor indicates evidence of a crime. *Norman*, 452 Md. at 408, 156 A.3d at 960-61 (citing *Robinson v. State*, 451 Md. 94, 152 A.3d 661 (2017)). Norman argued that because officers cannot differentiate between criminal and non-criminal amounts of marijuana, odor alone does not give rise to reasonable articulable suspicion that a vehicle contains a criminal amount of marijuana. *Norman*, 452 Md. at 409, 156 A.3d at 961. However, the court in *Robinson* stated that *any* odor of marijuana gives rise to probable cause to search a vehicle, as officers cannot distinguish the amount of marijuana that is present. *Norman*, 452 Md. at 409-410, 156 A.3d at 961. Because *Robinson* did not address whether the odor of marijuana gives rise to reasonable articulable suspicion to frisk nor did it mention guns, the court ultimately found Norman's argument meritless. *Id.* at 411, 156 A.3d at 962.

Although *Robinson* justified Dancho's search of the vehicle based on the odor of marijuana, it did not justify his frisk of Norman. *Norman*, 452 Md. at 411, 156 A.3d at 962. This was due to the Court of Appeals' finding that odor alone was insufficient to create a reasonable articulable suspicion that Norman was armed and dangerous. *Id.* While odor alone was not sufficient, the court summarized possible circumstances that may justify a frisk of a vehicle's occupant when the only other factor present is the odor of marijuana. *Norman*, 452 Md. at 426-27, 156 A.3d at 971. In these cases, the occupants exhibited extreme nervousness, made stealthy movements inside the vehicle, and provided false identification to the officer. *Id.* The instant

case was devoid of any of these additional circumstances. *Id.* Also, risk of harm to the officers was minimized, since Dancho called for backup and when the frisk occurred, the officers were no longer outnumbered. *Id.* at 427, 156 A.3d at 972.

The court held that there was no justification to frisk Norman, since the only factor present was the odor of marijuana. *Norman*, 452 Md. at 426-27, 156 A.3d at 971. Throughout the stop, Norman remained calm, made no attempt to flee and gave his correct identification to Dancho. *Id.* There were no additional circumstances to suggest Norman was armed and dangerous. The court found that a reasonably prudent officer in Dancho's position would not have feared that Norman was armed and dangerous. *Id.* at 427, 156 A.3d at 972. Therefore, under the totality of the circumstances it was unreasonable for Dancho to conduct a frisk. *Id.*

The dissenting opinion focused on the importance of officer safety. *Norman*, 452 Md. at 432, 156 A.3d at 974. Specifically, the dissenters argued that it was reasonable under the totality of circumstances to frisk Norman based on the notion that guns typically accompany drug activity. *Id.* at 432, 156 A.3d at 974-75. Furthermore, they noted that deference should be given to the reasonable inferences of the officer based on his training, knowledge and experience. *Id.* at 434, 156 A.3d at 975-76 (citing *U.S. v. Sakyi*, 160 F.3d 164 (1998)).

In *Norman*, the Court of Appeals of Maryland held that an officer does not have reasonable articulable suspicion to frisk Norman based solely on the smell of marijuana. This holding will substantially impact criminal law in Maryland, as it may now be easier to challenge a frisk when the only justification present is the odor of marijuana. The courts will have to determine what additional circumstances rise to the level of reasonable articulable suspicion that a person is armed and dangerous, thus justifying a frisk of that person. While acknowledging the importance of officer safety, the court protects the right against unreasonable search and seizures guaranteed by the Fourth Amendment.